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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,487	11/21/2001	Dennis L. Montgomery	042503/0273342 (ETV-016-U)	3181
909	7590	10/04/2004	EXAMINER	
PILLSBURY WINTHROP, LLP P.O. BOX 10500 MCLEAN, VA 22102			PEUGH, BRIAN R	
			ART UNIT	PAPER NUMBER
			2187	10
DATE MAILED: 10/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

SR

Office Action Summary

Application No.

09/991,487

Applicant(s)

MONTGOMERY, DENNIS L.

Examiner

Brian R. Peugh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-7 and 9 is/are allowed.
- 6) ☒ Claim(s) 1 and 8 is/are rejected.
- 7) ☒ Claim(s) 2-4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This Office Action is in response to applicant's communication filed March 29, 2004, in response to PTO Office Action dated October 28, 2003. The applicant's remarks and amendment to the specification and/or claims were considered with the results that follow.

Claims 1-9 have been presented for examination in this application. In response to the last Office Action, claims 1, 5, and 7 have been amended. Claims 8 and 9 have been added.

Drawings

The corrected drawings were received on April 2, 2004. These drawings are accepted by the Examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ishkawa (US# 4,682,305).

Regarding claim 1, Ishkawa teaches **a system for managing data units stored in a hard disk storage device, the system comprising: receiving means for receiving a new data unit to be stored in the storage device; monitoring means for monitoring the status of the storage device, and for generating an indication of whether there is enough free space in the storage device to store the new data unit; weighting means for, when the monitoring means indicates that there is not enough space in the storage device to store the new data, weighting data units stored in the storage unit according to a predetermined weighting system [error and registering system]; and erasure means for deleting data units in order of weights until there is enough free space in the storage device to accommodate the new data unit** [Fig. 4A and 4B; col. 2, lines 57-62; col. 3, lines 2-9, 14-17, and 42-45].

Regarding claim 8, Ishikawa teaches **the weighting means references a data table and wherein the data table includes at least one weight value related to at least one data unit** [col. 2, lines 57-62].

Allowable Subject Matter

Claims 5-7 and 9 are allowed over the prior art of record.

Claims 2-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claim 1-4 and 8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art corresponds to related data weighting systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Peugh whose telephone number is 703-306-5843. The examiner can normally be reached on Monday-Thursday from 7:00am to 4:30pm. The examiner can also be reached on alternate Friday's from 7:00am to 4:30pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks, can be reached on (703) 308-1756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 27, 2004


Brian R. Peugh
Patent Examiner
Art Unit 2187